

1 I think that's clear.

2 With regard to sort of the general concern
3 about Verizon having access to customer information
4 about Cavalier's customers, could you sort of walk
5 me through how the sort of processes and procedures
6 that Cavalier has proposed would work in that type
7 of situation, to either address that or remedy it
8 after -- attempt to remedy it after the fact?

9 MR. ZITZ: Well, I think, first of all,
10 Verizon needs to do something with its employee
11 base, to make it clear what's inappropriate
12 behavior. And I don't think all of the employees at
13 Verizon understand what's permissible and what's
14 not, so I think that that needs to be clear.

15 Secondly, when we do find examples of
16 behaviors that are inappropriate, then we really
17 need an opportunity to go to Verizon and say look,
18 here is the example, here is the behavior that was
19 wrong.

20 If I'm not mistaken in the contract
21 language, in the first violation, if you will, it's
22 a smack on the wrist, for lack of a better word.

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1 For any subsequent infraction, the proposed
2 penalties go into effect. And so what we're trying
3 to prevent here are the types of things that I
4 mentioned verbally and the types of things that are
5 included in my testimony. I'm not talking about an
6 incidental verbal slam here. I'm talking about
7 something that's material. Clearly for me, abusing
8 Cavalier customers and threatening them to leave
9 them out of the directory or forcing them to pay up
10 on their contract or to give our customer -- to
11 give -- to make our customer base available to the
12 general CLEC community, are examples of what I'm
13 trying to prevent here.

14 I'm not really talking about the service
15 rep who makes an incidental slam about Cavalier.
16 I'm talking about real infractions that have
17 consequences for customers that cause those
18 customers to want to leave me, and that also damages
19 my reputation.

20 MR. MAHER: I guess one sort of on a
21 related, I guess, but different issue is, in some of
22 the proposed language, there's a discussion about

1 customers or prospective customers of a party
2 calling into the other party and that the party
3 receiving the call is not permitted to provide
4 information about its own service offerings. I
5 guess my question is, how does that -- how does
6 Cavalier sort of envision that working in the
7 situations where somebody who is -- or an entity who
8 is a prospective customer of Cavalier might also be
9 a customer or prospective customer of Verizon or a
10 Verizon affiliate?

11 MR. ZITZ: I think the key here is that it
12 needs to be mutually agreed upon, and so perhaps
13 there is something that we will mutually agree to
14 say or not say about each other.

15 For me, the -- what I'm really trying to
16 get at here in my testimony is the situation where a
17 customer calls in to Verizon and says, "I want to
18 move my service to another company," and Verizon
19 says, "well, if you stay with us, we'll give you
20 free directory advertising for six more months,"
21 which they did with one of the customers that I
22 mentioned in my testimony.

1 So you know that -- you know, Verizon will
2 argue in that case that the directory is an
3 unregulated service and that the unregulated part of
4 Verizon should have a right to talk to its
5 customers. Well, that's right, but in the example
6 that I just gave, it's the core business using a
7 nonregulated product. That's the incentive to
8 retain the customer. So that's one no-no that I
9 think exists.

10 And then secondly, you know, I'm trying to
11 prevent a situation where the customer calls in --
12 calls in and says I want to go -- I want to move
13 over to Cavalier, and Verizon says, "well, you've
14 got to pay your directory bill upfront or we're
15 going to leave you out of the book for another
16 year."

17 So it's those types of situations that I'm
18 trying to avoid here. It's not -- the situations
19 that are excluded from this are where a customer
20 calls in and says I want to move to Cavalier, and
21 Verizon says, "well, that's fine, but we need to
22 have a discussion with you about your final bill."

1 That needs to occur, and that should occur.

2 What I'm really focusing on here is the
3 inappropriate behavior.

4 MR. MAHER: Thank you. From Verizon's
5 perspective then, Mr. Smith, what's -- in some of
6 the examples that Mr. Zitz gave in his testimony, to
7 the extent that they're different here, sort of how
8 does Verizon see this playing out, to the extent any
9 of these are actual sort of verified problems?
10 We've been assuming for the sake of argument that
11 there are actual instances of inappropriate conduct.

12 MR. SMITH: Some of the instances Mr. Zitz
13 raises are by either our wholesale organization as
14 opposed to our retail organization, and that's
15 really with respect to, I think, the bill and the
16 CSR issues. So I'll address those separately.

17 For the issues around our retail
18 organization and around our directory assistance
19 organization, clearly, not our directory assistance,
20 but directory advertising, excuse me. Our directory
21 advertising organization is a separate subsidiary,
22 it's unregulated, it's a competitive service. And

1 they deal with their customers separately from how
2 the wireline core business deals with our customers.
3 And I really don't think -- they're not a party to
4 this interconnection agreement.

5 To the extent that we find any
6 inappropriate behavior, we try to make sure that
7 that is reviewed with the employees; it's reinforced
8 what the appropriate behavior is. All of the
9 employees in the core telephone business are
10 required on an annual basis to review our code of
11 business conduct, which covers situations just like
12 this, what information we can and can't use, what we
13 can and can't say about competitors or customers --
14 you know, competitor -- customers in this case.

15 That is reviewed, and everyone is required
16 to sign off on that, on an annual basis. So it is
17 something we take very seriously.

18 To the extent people make mistakes or do
19 things that are incorrect, we obviously want to know
20 about it, because we want to take the corrective
21 measures -- we want to make sure that we go back and
22 reinforce policies and procedures. If somebody

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1 didn't understand something, we want them to know
2 about that.

3 I am -- you know, I disagree that there is
4 any systematic approach that Verizon uses to find
5 out about customers moving to Cavalier and tries to
6 prevent that. I don't see that; I don't have any
7 examples to prove that.

8 To the extent things occur and concrete
9 examples, names, dates can be provided, Verizon will
10 investigate those and take the appropriate internal
11 disciplinary action.

12 MR. MAHER: So maybe you could walk me
13 through, then, a little bit. Mr. Zitz mentioned one
14 of the things that sort of Cavalier wants is some
15 way to sort of go to Verizon and say here's the
16 problem that's happening. How does that -- is there
17 such an opportunity under sort of Verizon's proposed
18 language or currently or how would that work?

19 MR. SMITH: There's always an opportunity
20 for a customer to bring an issue to our attention.
21 Working through their account management team
22 usually is the way this information is presented,

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1 and it allows the account management team to go to
2 the appropriate organization with the information
3 and do the investigation necessary to uncover the
4 facts, and then decide on the appropriate level of
5 discipline for an employee, if it was an employee
6 doing something that was incorrect.

7 MR. MAHER: So Mr. Zitz, has it been -- I
8 mean, I don't know to what extent you are familiar
9 with how Cavalier sort of tried to work through this
10 process with Verizon, but has it been your
11 experience that that process exists and works
12 somewhat, or is it inadequate or what's the concern
13 for something more?

14 MR. ZITZ: It does not work. It becomes a
15 bantering of e-mails between the organizations, and
16 there is not a desire to help the end user who is
17 inconvenienced. And I worry -- I worry about
18 Verizon, because it is a very large organization.
19 It is very much decentralized. The spans of
20 controls are large. In many cases, the local
21 management for a market area is not in the local
22 market. You can look at an organizational chart and

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1 see that.

2 And I really do believe that the
3 individuals who are behaving inappropriately do so
4 and it goes unchecked because their supervisor is
5 200 miles or 300 miles away.

6 And I think that this smacking on the
7 wrist of the employee is not enough to make up for
8 the inconvenience that my customers go through. So
9 I really think there needs to be some penalty on
10 Verizon when it does misbehave that will deter
11 employees and encourage them to do something
12 internally about the people who misbehave.

13 MR. MAHER: I guess just for Mr. Smith,
14 one sort of separate issue. It appears that the
15 existing AT&T agreement, the language there deals
16 with misdirected repair calls and referrals that --
17 referrals specifically that occurred in the case of
18 misdirected repair calls. And one of Cavalier's
19 proposed changes is to sort of make that more
20 general to any sort of misdirected calls. And I'm
21 just wondering, what's Verizon's position, aside
22 from all this other specific sort of penalty plans

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1 and investigations, about imposing -- having some
2 sort of referral process in the case of other types
3 of misdirected calls?

4 MR. SMITH: I think our policy on
5 misdirected calls, if somebody calls us and says
6 gee, I wanted to talk to Cavalier, we direct the
7 customer to contact Cavalier or whatever CLEC it is,
8 that we are not your local provider, someone else
9 is.

10 To the extent that we want to make it even
11 broader, and I think that's what Cavalier was
12 proposing, we would provide certain information
13 about their products and services, you know, as
14 Mr. Zitz just said, we have a lot of people; they're
15 decentralized. Now, to train all of them on what
16 Cavalier is offering is unduly burdensome to
17 Verizon.

18 We don't want to take on the
19 responsibility for describing what Cavalier does or
20 doesn't do. The best thing to do for the customer
21 at that point is to refer them to the appropriate
22 company and provide them with the contact number,

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1 where they can find the contact number, and have
2 them interface directly with the provider that they
3 want to talk to, go right to the source.

4 MR. MAHER: That's all I had.

5 MS. NATOLI: Mr. Zitz, is that the kind of
6 referral information that you all were expecting or
7 proposing that Verizon provide, or was it just a
8 proper kind of we're not your local phone company
9 but Cavalier is, here's their telephone number to
10 contact?

11 MR. ZITZ: The latter.

12 MS. NATOLI: The latter.

13 MR. ZITZ: Yes.

14 MS. NATOLI: Okay.

15 MR. ZITZ: And once a customer has made a
16 decision to go with Cavalier, back off and don't do
17 or say anything that interferes with the transaction
18 that I have with the customer, meaning don't offer
19 them free directory, don't call to threaten to
20 discontinue their directory advertising, don't
21 threaten to leave them out of the book.

22 MS. NATOLI: And I think this goes to

1 what -- the question that Mr. Maher just asked. If
2 the language in the section dealing with the
3 misdirected calls, that's where the disparaging
4 language is -- is that where the language about the
5 disparaging --

6 MR. MAHER: It's in that section
7 generally. There's a little variation between them.

8 MS. NATOLI: If that language was
9 broadened to cover all Cavalier customer contacts,
10 would that get you somewhere close to -- somewhere
11 towards where you're hoping to go, meaning that it's
12 all Verizon employee-related contacts with Cavalier
13 customers that really should be contacts that those
14 customers direct to you, but have for one reason or
15 another have ended up at Verizon?

16 MR. ZITZ: May I ask you just to make that
17 contract reference so that I can just take a look at
18 the language?

19 MS. NATOLI: You know, I'm sorry to say, I
20 don't remember exactly where it is. I don't know
21 where it is, but it's language that simply says
22 neither party shall make disparaging remarks about

1 the other party's employees, products or -- there's
2 one other thing.

3 MS. GRILLO: It's 18.24.

4 MR. PERKINS: I'm sorry, I was showing him
5 18.2.3.2.

6 MR. ZITZ: Is that the section you cited?

7 MR. PERKINS: Last sentence?

8 MS. NATOLI: Yes, that's exactly it. It's
9 18.2.3.2. That's what I'm referring to. And that
10 appears to be limited to misdirected repair calls.
11 And my question was, is your -- are you -- you
12 really are just trying to get language like that,
13 "neither party shall make the disparaging remarks,"
14 not limit just to misdirected repair calls but for
15 any type of contact that Verizon would have with
16 Cavalier.

17 MR. ZITZ: Yes.

18 MS. NATOLI: May I ask, by proposing your
19 contrasting language, you're willing to impose the
20 same reciprocal type of code of conduct on your own
21 employees. And how about the liquidated damages
22 type thing that you're proposing? Is that the kind

1 of thing -- would Cavalier be willing to have such a
2 thing if, in fact, there was a similar situation on
3 the other end?

4 MR. ZITZ: We would be willing to discuss
5 a reciprocal situation, or reciprocal arrangement,
6 I'm sorry.

7 MS. NATOLI: And include it in the
8 interconnection arrangement?

9 MR. ZITZ: Yes.

10 MR. LERNER: Mr. Smith, can I just -- oh,
11 sure.

12 MR. PERKINS: I'm sorry, could I direct
13 him to 18.2.6?

14 MR. ZITZ: I believe in 18.2.6 there's
15 reciprocity in that section now.

16 MS. NATOLI: Okay, thank you. Mr. Smith,
17 my question for you is, you apparently understand
18 the huge organizations and that you can tell
19 employees several times and they just don't listen
20 or they forget or they didn't hear you.

21 Do you think these kinds of situations
22 that Cavalier is talking about are very frequent or

1 very infrequent?

2 MR. SMITH: I would characterize them as
3 very infrequent. I don't hear a lot of complaints
4 on this issue. I've only personally been involved
5 in one or two over the last several years, where
6 somebody had inappropriate behavior and it's been
7 dealt with.

8 MS. NATOLI: Do other competitive carriers
9 have the same kinds of, couple issues like this,
10 occasionally?

11 MR. SMITH: Occasionally you will hear one
12 or two issues, but I don't hear that it is a
13 widespread issue.

14 MS. NATOLI: And I guess then my follow-up
15 question would be if it isn't and it really -- and
16 according to the way you described, you know, you do
17 the investigation because you're really interested
18 in getting to the bottom of it, I guess I'm
19 wondering why it would be such an onerous provision
20 to have some kind of a liquidated damage clause,
21 which is how, I guess, we would view it, rather than
22 a penalty, given that the relative impact of this

1 kind of thing to a competitive carrier would tend to
2 be much greater than it would be on the converse
3 side, if it were?

4 MR. SMITH: It causes us to set up a whole
5 new investigative arm that would have to go through
6 and document all of these cases to prepare, you
7 know, for payment. I also think it sends the wrong
8 message to the industry, that it opens up a
9 potential opportunity -- a revenue stream to start
10 making complaints with respect to people did the
11 wrong thing.

12 MS. NATOLI: So you're concerned there
13 would be a "gaming the system" thing and it would be
14 used as that. But provided that somehow that type
15 of mechanism would be eliminated or there would be
16 some kind of a deterrent in place to avoid that, I
17 mean, do you think it's reasonable that when you do
18 get these very valid egregious circumstances, which
19 we all know do occur, not the Verizon organization's
20 fault per se, but that I mean, it may be appropriate
21 at times for something like that?

22 MR. SMITH: I think I still prefer to see

1 it handled without liquidated damages imposed. It
2 allows the company to discipline the individual, you
3 know, up to and including termination if someone has
4 really performed egregious acts.

5 MS. NATOLI: But the problem is, is that
6 the party that has been harmed is the CLEC. I
7 realize that your employee, who is getting
8 disciplined, is harmed, but if the competitor, in
9 this situation Cavalier, has a very large customer
10 with a large revenue stream and that customer is
11 unhappy with Cavalier as a result of something that
12 was and has been concluded to be a Verizon
13 employee's fault, isn't that -- I mean, that's the
14 situation I'm talking about. I'm talking about the
15 redress to that. And vice versa, because I think
16 they indicated that in a situation like that, they
17 would be willing to do it too.

18 MR. SMITH: I think there are other
19 methods of addressing and providing compensation.
20 Obviously, if a Verizon employee did something that,
21 you know, was egregious and damaged the Cavalier
22 customer relationship, Cavalier has other options to

1 seek redress rather than a liquidated damages
2 provision, in the agreement, that I'm not sure how
3 we could manage that well. I mean, I think it's a
4 very difficult thing to administer. I think
5 Cavalier can obviously bring a complaint; they can
6 bring suit against Verizon for that problem.

7 MS. NATOLI: Okay. I guess -- well, that
8 may get us into our limitation of liability issue,
9 which is for another floor, because I'm not sure --
10 that may preclude that or appear to preclude that,
11 so I'm not sure about that. Okay. That's all I
12 have.

13 MR. LERNER: Ready to move on to issue --
14 well, I guess the parties want to move into evidence
15 the testimony relating to issue C17?

16 MR. PERKINS: Cavalier moves into evidence
17 the testimony of Mark Zitz as Cavalier Exhibit 10.

18 MS. NEWMAN: Verizon already moved into
19 evidence the testimony of Mr. Smith.

20 (Exhibit C-10 received.)

21 MR. LERNER: Issue C10, witnesses, please.

22 MS. NEWMAN: Excuse me, I need a

1 clarification on the record. Are you sure that was
2 Exhibit 10, Steve? Our records say Exhibit 12 for
3 yours.

4 MR. PERKINS: Oops --

5 MR. LERNER: Off the record.

6 MS. SHOCKET:

7 (Discussion off the record.)

8 MR. LERNER: Back on the record, we can
9 reflect that Mr. Zitz's testimony has been offered
10 into and accepted into evidence as Exhibit C-10.
11 And now on issue C10 that we turn to, and we have
12 return of Mr. Albert, who has already been sworn in.
13 And if the additional -- we'll start with Verizon,
14 if the witness will introduce herself, please.

15 MS. SHOCKET: I'm Alice Shocket. I am
16 senior product manager and wholesale markets
17 division, responsible for dark fiber.

18 MR. ASHENDEN: I'm Matt Ashenden, Cavalier
19 Telephone.

20 MR. LERNER: And I believe we're back to
21 Cavalier having the first opportunity for
22 cross-examination.

1 Whereupon,

2 ALICE SHOCKET and

3 MATT ASHENDEN

4 were called as witnesses and, having first been duly
5 sworn, were examined and testified as follows:

6 EXAMINATION

7 BY MR. PERKINS:

8 Q Good afternoon, Verizon panel. May I
9 please direct you to page 15, lines 3 through 13 of
10 your direct testimony, and actually I'll ask just
11 generally first so you don't have to flip pages.
12 Well, let's do it the way I said, I'm sorry. Page
13 15, lines 3 through 13. I'll ask you -- pardon me.

14 Under the process that you describe here
15 for dark fiber inquiries, is it possible for
16 Cavalier to submit a dark fiber inquiry and get a
17 "not available" response from Verizon and for
18 another entity to request the same amount of fiber
19 along the same route through another dark fiber
20 inquiry submitted a week or two later and get an
21 "available" response from Verizon?

22 A (Ms. Shocket) It's possible that it could

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1 happen, depending on when the inquiries were
2 submitted and the fiber records updated with new
3 fiber availability.

4 Q In that case, if it were a records update,
5 would it also be possible for Cavalier to submit a
6 dark fiber inquiry on the same date that we're
7 talking about, and then through a field survey find
8 out that the fiber was, in fact, available instead
9 of unavailable?

10 A (Mr. Albert) There are a couple things
11 that could happen. When we provide an answer to an
12 inquiry, that's designed to be a relatively quick,
13 cheap yes it's available or no, it's not response to
14 the CLEC, based on the information in our records
15 as-is. There are some occasions when the
16 information in our records does not match what
17 physically exists out in the field. A field survey
18 would verify when that set of circumstances existed.

19 So it's possible that you could get a no
20 to an inquiry or a yes, based on our records, and
21 then when we went to provision the order for a yes,
22 it turned out there really was nothing there, or

1 when we went to perform a field survey for what had
2 been a no, that there actually was spare stuff
3 available. So that's one set of circumstances that
4 can happen.

5 The other thing that can happen on a daily
6 basis in addition to just capacity being added to
7 the network, more typical is just normal churn that
8 would occur in the network and that there is service
9 order activity that adds and assigns and uses
10 circuits, and there's service order activity that
11 disconnects and makes available circuits. That
12 stuff is going on constantly in our network. And
13 those types of changes can result in fiber being
14 available one day and not available a couple weeks
15 later.

16 Q And those processes that you mentioned,
17 new construction and churn, Cavalier knows nothing
18 about those processes as they occur; is that true?

19 A (Ms. Shocket) Unless it's Cavalier that's
20 removing or adding fiber.

21 Q Well --

22 A (Ms. Shocket) Yes, that would be true.

1 Q Okay. Turning to the issue of the CO
2 connectivity dark fiber maps, if I can call it that.
3 Is that an intelligible way to refer to it with you?

4 A (Mr. Albert) That's okay.

5 Q Okay. I'll take what I can get. Verizon
6 opposes Cavalier's proposal for dark fiber maps
7 showing connectivity between COs instead of the
8 fiber routes within the area served by a single CO;
9 is that correct?

10 A (Mr. Albert) That's correct.

11 Q Do you know whether -- I'm going to ask
12 you with respect to several commercial vendors if
13 you know whether they provide this type of map
14 showing the CO connectivity or connectivity between
15 points of presence. Do you know if AboveNet,
16 formerly known as MFN, provides that type of net?

17 A (Ms. Shocket) I'm not aware of it.

18 A (Mr. Albert) I've read your witnesses'
19 testimonies saying that they did. I personally have
20 never seen any.

21 Q I'm just asking you what you know.

22 A (Mr. Albert) I don't.

1 Q You don't know about AboveNet, formerly
2 known as MFN?

3 A (Mr. Albert) I've never seen maps of the
4 issue you described from any other carrier.

5 Q How about Xspedius, formerly known as
6 ACSI, or e.spire?

7 A (Ms. Shocket) I don't have any knowledge.

8 A (Mr. Albert) Same answer for any carrier.

9 Q Let me tick through them quickly and see
10 if there's any difference. Looking Glass Networks?

11 A (Mr. Albert) Never seen anything.

12 Q Level 3?

13 A (Mr. Albert) Never seen anything.

14 Q Dominion Telecom?

15 A Never seen anything.

16 Q City Signal Communications?

17 A (Mr. Albert) I thought -- I've never seen
18 anything but I thought that used to be -- I thought
19 that was a Cavalier company.

20 Q No, it's not.

21 A (Mr. Albert) Okay. But I haven't seen
22 anything.

1 Q Okay. How about Cavalier itself, did you
2 see the map that we produced in discovery?

3 A (Ms. Shocket) No, we haven't seen that.
4 Have you seen it?

5 A (Mr. Albert) No.

6 Q So are you familiar with any dark fiber
7 maps provided by commercial vendors to CLECs or
8 other carriers like Cavalier?

9 A (Ms. Shocket) I am not aware of any.

10 A (Mr. Albert) Same here.

11 Q So would it be fair to say that you don't
12 really have any personal knowledge of how dark fiber
13 maps are used in ordinary commercial circumstances
14 but only in the area -- only in the way that Verizon
15 provides dark fiber maps?

16 A (Ms. Shocket) We don't provide dark fiber
17 maps. We would provide a fiber layout map that
18 would tell you where the fiber routes are, and
19 there's -- we don't have any maps that we would just
20 take off the shelf that we could produce that shows
21 dark fiber. And dark fiber changes on a frequent
22 basis. So any map that we would produce today would